

SPEED POST



F.No. 375/32/B/2020-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue. 24/03/22

Order No. 99 /22-Cus dated 24-03- 2022 of the  
Government of India passed by Sh. Sandeep Prakash,  
Additional Secretary to the Government of India, under Section  
129DD of the Customs Act, 1962.

Subject : Revision Application filed, under Section 129 DD  
of the Customs Act 1962 against the Order-in-  
Appeal No. CC(A)Cus/D-I/Air/842/19-20 dated  
22.11.2019 passed by the Commissioner of  
Customs (Appeals), NCH, New Delhi.

Applicant : Sh. Mudassir Ali, Deoband, Saharanpur.

Respondent : Commissioner of Customs, IGIA, New Delhi.

**ORDER**

A Revision Application No. 375/32/B/2020-RA dated 04.03.2020 has been filed by Sh. Mudassir Ali, Deoband, Saharanpur (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CC(A)Cus/D-I/Air/842/19-20 dated 22.11.2019 passed by the Commissioner of Customs (Appeals), NCH, New Delhi. Commissioner (Appeals) has upheld the Order-in-Original No. 274/Adjn./2018 dated 18.06.2018, passed by the Additional Commissioner of Customs, IGI Airport, New Delhi, whereby, 06 pieces of gold bars, collectively weighing 700 gms and valued at Rs. 19,23,267/-, were confiscated absolutely under Section 111(d), 111(i), 111(j), 111(l), 111(m) and 111(o) of the Customs Act, 1962. Penalty of Rs. 3,85,000/- was also imposed on the Applicant herein under Sections 112 and 114AA of the Customs Act, 1962.

2. Brief facts of the case are that the Applicant arrived from Bahrain, on 06.12.2017, at IGI Airport, New Delhi. He was intercepted by the customs officers after he had crossed the Green Channel and asked whether he was carrying any dutiable items to which he replied in negative. Search of his checked-in baggage revealed three SMD rechargeable emergency lights, which on opening resulted into recovery of 06 bars of Gold, collectively weighing 700 grams and valued at Rs. 19,23,267/-. The Applicant could not produce any licit documents in support of his legal possession of the gold bars. In his statement dated 06.12.2017, tendered under Section 108 of the Customs Act, 1962, the Applicant stated that the gold bars did not belong to him; that they were given to him by one

Shamim who offered to arrange air tickets for him to Delhi and instructed him to deliver the three SMD Rechargeable Emergency Lights to somebody who would visit him in Delhi; that he did not report to the red channel of customs to evade customs duty; and that he did not have any dispute on description, quantity, weight, purity and value of the goods. The Additional Commissioner of Customs, IGIA, New Delhi, confiscated absolutely the said gold bars and imposed a penalty of Rs. 3.85 lakhs on the Applicant. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals) who, vide the impugned OIA, has rejected it.

3. The instant revision application has been filed, mainly, on the grounds that import of gold is not prohibited; that his statement on the day of happening was in English which he did not understand; that there is no reference to his retraction dated 29.12.2017; and that the gold may be released on payment of fine/duty; and that no penalty is imposable as he is illiterate.

4. Personal hearing was granted on 11.02.2022, 02.03.2022 and 23.03.2022. None appeared for either of the parties. No request for adjournment has been also received. Since sufficient opportunities have been granted, the matter is taken up for disposal based on records.

5. The Government has carefully examined the case. Gold bars were not declared by the Applicant, in violation of Section 77 of the Customs Act, 1962. In his statement tendered under Section 108 of Customs Act, 1962, the Applicant admitted that he was not the owner of the gold bars and one Shamim had given him the emergency lights containing the gold bars to be delivered to some receiver who would be visiting him in Delhi. Later, the Applicant, however, contended that the gold bars belonged to him and requested for release on payment of duty/fine/penalty. The Government observes that a confession made before a Customs officer is admissible and binding, even if subsequently retracted [Ref. Surjeet Singh Chabra Vs. UOI {1997 (89) ELT 646 (SC)}]. In any case, the ingenious manner of concealment makes it evident that the offending gold was not licitly acquired. In this light also, the statement made at the time of occurrence of the incident appears to be reliable.

6. Section 123 of Customs Act 1962 reads as follows:

*"123. Burden of proof in certain cases.*

*(1) Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be—*

*(a) in a case where such seizure is made from the possession of any person, —*

*(i) on the person from whose possession the goods were seized; and*

*(ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;*

*(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.*

*(2) This section shall apply to gold and manufactures thereof watches, and any other class of goods which the Central Government may by notification in the Official Gazette, specify."*

Hence, in respect of the gold and manufactures thereof, the burden of proof that such goods are not smuggled is on the person, from whom goods are recovered. In the present case, the gold bars were not declared by the Applicant to the customs officers, as required under Section 77 of Customs Act, 1962. He admitted that he had intentionally not declared the gold items to avoid customs duty. No documents evidencing licit possession of gold bars have also been placed on record. The gold bars were concealed in an ingenious manner to evade detection thereby making intention to smuggle, manifest. The Applicant has, thus, failed to discharge the burden placed on him, in terms of Section 123, *ibid*.

7.1 The Applicant has contended that the import of gold is not 'prohibited'. Hon'ble Supreme Court has, in the case of Sheikh Mohd. Omer vs Collector of Customs, Calcutta & Ors [1971 AIR 293], held that for the purpose of Section 111(d) of the Customs Act, 1962, the term *"Any prohibition" means every prohibition. In other words all types of prohibition. Restriction is one type of prohibition*". Gold is not allowed to be imported freely in baggage and it is permitted to be imported by a passenger subject to fulfillment of certain conditions. In the case of M/s Om Prakash Bhatia Vs. Commissioner of Customs,

Delhi [2003(155) ELT423(SC)], the Apex Court has held that *"if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods"*. Further, in the case of UOI & Ors vs. M/s Raj Grow Impex LLP & Ors (2021-TIOL-187-SC-CUS-LB), the Hon'ble Supreme Court has followed the judgments in Sheikh Mohd. Omer (supra) and Om Prakash Bhatia (supra) to hold that *"any restriction on import or export is to an extent a prohibition; and the expression "any prohibition" in Section 111(d) of the Customs Act includes restrictions."*

7.2 In the case of Malabar Diamond Gallery P. Ltd. Vs ADG, DRI, Chennai [2016(341) ELT65(Mad.)], the Hon'ble Madras High Court has summarized the position on the issue, specifically in respect of gold, as under:

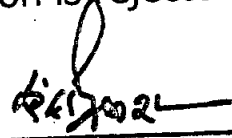
*"64. Dictum of the Hon'ble Supreme Court and High Courts makes it clear that gold, may not be one of the enumerated goods, as prohibited goods, still, if the conditions for such import are not complied with, then import of gold, would squarely fall under the definition "prohibited goods", in Section 2 (33) of the Customs Act, 1962----."*

7.3 The gold and gold ornaments are allowed to be imported subject to certain conditions and, in this case, as correctly held by the authorities below, the conditions, subject to which gold could have been legally imported, have not been fulfilled. Thus, following the ratio of the aforesaid judgments, there is no doubt that the subject goods are 'prohibited goods'.

8. The Applicant has contended that the gold bars may be released on payment of fine. In terms of Section 125 *ibid*, the option to release 'prohibited goods', on redemption fine, is discretionary, as held by the Hon'ble Supreme Court in the case of Garg Woollen Mills (P) Ltd vs. Additional Collector of Customs, New Delhi [1998 (104) E.L.T. 306 (S.C.)]. In the case of Raj Grow Impex (*supra*), the Hon'ble Supreme Court has held "*that when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; and has to be according to the rules of reason and justice; has to be based on relevant considerations*". Further, in the case of Commissioner of Customs (Air), Chennai-I Vs P. Sinnasamy {2016(344) ELT1154 (Mad.)}, the Hon'ble Madras High Court, after extensive application of several judgments of the Apex Court, has held that "*non-consideration or non-application of mind to the relevant factors, renders exercise of discretion manifestly erroneous and it causes for judicial interference*". The Hon'ble High Court has further held that "*when discretion is exercised under Section 125 of the Customs Act, 1962, the twin test to be satisfied is 'relevance and reason'*". In the present case, the original authority has refused redemption taking into consideration the ingenious manner of concealment, intention to evade duty and in the context of Government's policy restricting import of gold. Thus, the order of absolute confiscation of goods is based on relevant and reasonable considerations. As such, applying the ratio of Raj Grow Impex and Sinnasamy, the discretion exercised by the original authority does not merit interference.

9. The penalty imposed is just and fair, in the facts and circumstances of the case.

10. In view of the above, the revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

Sh. Mudassir Ali, S/o Late Sh. Bhoora urf Mursalin.  
Village- Labkari, PO-Deoband.  
District- Saharanpur, UP.

Order No. 99 /21-Cus dated 24-03-2021

Copy to:

1. The Commissioner of Customs, IGIA, New Delhi.
2. The Commissioner of Customs (Appeals), NCH, New Delhi
3. PA to AS(RA).
- ✓ 4. Guard File.
5. Spare Copy.

ATTESTED



(Ashish Tiwari)  
Assistant Commissioner (RA)